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10/625,146

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John R. Sloop

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EXAMINER

LEVY, NEIL S

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/625,146  
Filing Date: July 23, 2003  
Appellant(s): SLOOP, JOHN R.

ANTHONY F. BONER, Jr.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 3/30/09 appealing from the Office action of 10/31/2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

The rejection under Fajt was over claim1; however, claims 27 & 28 were rejected in the body of the rejection, and appellant has considered & argued the rejection of claims 1, 27 & 28. The rejection is as appellant states-

Claims 1, 27, & 28 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over FAJT 5674518, with evidence of GETACHEW, 1989.

The following rejection is also maintained:

Claim1 stands rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Shulyer-2957804.

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

#### **(8) Evidence Relied Upon**

2,957,804	SHUYLER	10-1960
5674518	FAJT	10-1997

GETACHEW, T. "Stomach pH, feeding rhythm and ingestion rate in OREOCHROMIS NILOTICUS L. (Pisces:Cichlidae) in Lake Awasa, Ethiopia " Hydrobiologia 174: 43-48, 1989

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 27 and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Examiner fails to find “adapted” in the specification. Appellant has replaced “configured” with adapted and explained that the term is an equivalent term. The device attracts or entices an animal with meat or sugar, and in that manner is adapted, (or configured). Examiner accepts this explanation for the adapted attractant.

However, the claims to a target wild animal, while met with the disclosed sugar or meat, do not prevent non-target animals from being attracted & subdued. The specification addresses this issue, but the solution; dissolution of the trigger in a predetermined pH does not preclude dogs, cats & rats from being attracted & killed by this device. There is no specificity of ingredients or components. Appellant relies on a low stomach pH as a means for targeting specific animals, such as coyotes. But the low acidity is also found in other carnivores; dogs.

The specification identifies subduing agents [0025], only as metal, drug, or percussion or chemical reactants, or sponges, not further exemplified, defined or identified except for Na, K or Li at [0036], stated to result in energy release, but not explained as to how

This leads to death or subduing. It is left to the artisan to determine how much of what components are to be used to subdue a desired species. The specification does not present exemplification of effectiveness to subdue one species, but not harm another.

There is no description of specific elements of an apparatus with any form or amount of attractant, elected as meat, in or on an apparatus with any specific form or material in any particular amount that would dissolve in the elected pH with any specific subduing agent and amount thereof, except for the non-elected exploding components.

The metal subduing agents were not presented in any shape, form, or amount, in connection with any specific trigger material and meat or other attractant material, to enable one of ordinary skill to practice the claimed invention.

Appellant states (page 5, last line, of Brief) that the trigger is a metal, but there is no such disclosure in the Specification. Neither is it evident how the sugar or meat, the only specified attractants one would incorporate in the wild animal control device, would be wrapped around or naturally adhere to the surface of the trigger, which is the argument presented by appellant as explanation of how the trigger is coupled to the subduing agent.

Appellant refers to figures 4 & 8 as explanations of the connection of the attractant, trigger & subduing agent, but these figures are schematics, and do not present any connecting means or identification of the trigger. The trigger is stated to

contain the subduing agent, thus can be considered to be one and the same. For example, at page 5 of the specification, the subduing device comprises a trigger designed to react to a select pH. The trigger device comprises a material which reacts at  $\text{pH} < 2.5$ , and so results in the trigger reacting. Appellant also refers to page 7, line 9 & page 9, line 7; there is no metal or any other ingredient or material identified here or elsewhere as to the composition of the trigger.

We are given no specific compound, material or composition of the trigger, thus it is beyond the capabilities of one of ordinary skill in the art of formulating wild animal control apparatus' to know what to use as a trigger & how to couple it to the subduing agent and attractant.

With all due respect for appellant's application, In essence, examiner finds consideration of the claims read in light of the specification, except for the unelected, unexamined percussion/explosive inventions, leave one with a fishing expedition to find materials and components that dissolve in low pH, but not above 2.5, to wrap around drugs or chemicals, that need to be determined, that would render a specific animal dead, or as shown on Fig. 3, on its back and able to be handled. It is not evident as to how one would identify acceptable subduing and triggering materials, except by extensive experimentation.

Claims 1 , 27,28 STAND rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The invention as claimed presents no distinct coupling agents or means as to how the subduing agent is coupled to the trigger, or what the trigger is. The arguments presented are that the trigger is metal, & reacts at a predetermined pH level. Appellant refers to page 7, line 9 & page 9, line 7; there is no metal or any other ingredient or material identified here or elsewhere as to the composition of the trigger, or as to how to is coupled to attractant and subduing agents.

Appellants' arguments were persuasive as to the configuring or adapting of the attractant.

Claims 1, 27, & 28 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the" alternative, under 35 U.S.C. 103(a) as obvious over FAJT 5674518 with evidence of GETACHEW, 1989.

Instant claim 1 is a wild animal control apparatus, of an attractant (fig.4, 30), A trigger covered by a portion of the attractant(fig. 4, 34), and a subduing agent (fig. 4, 36) , adapted to subdue wild animals once the apparatus is in the digestive system of an animal with a predetermined pH which causes the trigger to dissolve and activate the subduing agent.



Fajt at claim 1 claims a method of controlling a target fish species, by forming a fish food pellet having an attractant, with a piscicide, rotenone, with results in death following oral consumption. Claim 6 further coats with a binder, while claim 9 specifies the instant meat- fishmeal, beef by-products. Fig. 1, described at col. 2, lines 16-36, provides a toxicant core, 1- the instant subduing agent, A gel layer, 2- the instant trigger, & a fish-food layer, 3 the instant attractant.

The addition of surfactants to release energy by lowering membrane surface tension of the stomach (col. 3, lines 45-51). Also, metal hydroxides – Na & K hydroxide- are used, (col. 3, last paragraph) to increase absorption of the rotenone through the stomach lining by increasing the pH (col. L4, top), Permitting Rotenone to dissolve & enter the body, & eventually subdue the fish... There can be a mineral oil, (col. 3, last paragraph) and binder coatings, of gelatin, agar (col. 5, lines 6-14). The stomach pH is acid. (col. 4, lines 20). This is a predetermined pH, inclusive of the fish species addressed by Fajt-carp, tilapia (col. 6, line 45). GETACHEW shows fish generally have a low stomach pH, with Tilapia at 1.4-1.5 (page 44, Results).

Claims 27, 28 are met as the KOH can be considered to not be a poison, but it acts in accord with the instant claim to indirectly subdue the fish. Claim 27 meat is evident at col. 6, lines 37-beef byproducts or fish meal. Although not stated as 0.5-2.5, the Ph of the stomach would be at that level- it is stated to be acidic (col. 4, line 20).

Claim1 stands rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Shulyer-2957804

Wild animals (column 2, lines 40-46) can be killed with bait, attractant (column 5, lines 21-26) coated over a pH-sensitive trigger (column 4, lines 67-73) so the animal ingests the attractant bait which is effective to release (Table A) a subduing agent only in a high pH, intestinal, environment. Meat odors bacon, are attractant (column 12, line 35), as is sugar (line 25, col. 12).

When eaten, the outer layer of the wild animal control bait dissolves in the acid stomach environment(col. 11, lines 57- 67) Where the alkaline pH causes the enteric coating to dissolve, and triggers the release of the toxicant. These include metabolic energy disruptive pesticides; arsenic, strychnine, 1080, phosphorus, thallium for instance (Table A).

Attractants include odors, colors, & taste attractants (claims 15-18).

The pH is predetermined, the outer layer is attractant (col. 5, lines 20-23), the enteric layer is a trigger & coats the core rodenticides , (col. 2, lines 26-28) the instant subduing agents.

#### **(10) Response to Argument**

Appellants' arguments have been addressed at the rejections above.

Art Unit: 1615

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/NEIL LEVY/

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